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RENNER OTTO BOISSELLE & SKLAR, LLP			HARMON, CHRISTOPHER R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/781,733

Filing Date: February 12, 2001

Appellant(s): HARDING ET AL.

M. David Galin
For Appellant

EXAMINER'S ANSWER

MAILED
FEB 13 2004
GROUP 3700

This is in response to the appeal brief filed 2/4/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(assignee Ranpak Corp.)

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. (No related appeals or interferences.)

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 6-32, which stand non-finally rejected.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 6, 10-14, and 20-29 do not stand or fall together because
appellant's brief does not include a statement that this grouping of claims does not

stand or fall together and reasons in support thereof. Furthermore, claim 6 cannot both stand alone and be grouped with claims 7-9 and 15-19. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,571,067 Ratzel 11/1996

5,322,586 McLean 6/1994

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in–
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 6-11, 13, and 15-24, 27-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Ratzel (5,571,067).

Ratzel discloses a method of determining a total amount of stock material

passing through a cushioning conversion machine comprising providing sheet material S, converting material S into cushioning product P, and monitoring passage of stock

material through conversion machine 10. Information of the amount of stock material is stored, retrieved, and exchanged with conversion machine 10 by process controller/computer 11. Gear assembly 54 pulls the material from the former 52. The process controller sends and receives signals to the monitoring assembly (length measuring device 12) located near the gear assembly 54 (monitors angular motion of the gear assembly). Thus signals are generated and stored and stored information corresponding with a cumulative length is retrieved by the processor to activate the cutting mechanism. For these purposes the information is considered automatically downloaded. See column 6, lines 48-65.

Ratzel discloses automatically downloading stored information to a remote processor through the use of a bar code system; see column 6, lines 53-58.

Ratzel describes monitoring a length of material to be produced in various lengths during a period of time while feeding out the desired length of each individual pad and cutting it to separate lengths; see column 6, lines 48-66. Information of desired cumulative lengths is stored and retrieved in order to operate the successive feeding operations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12, 14, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratzel (5,571,067) in view of McLean (US 5,322,586).

Ratzel does not directly disclose transmitting information to a personal computer or using a visual display, however McLean teaches a length measuring system with a visual display 8A-8H. The measuring system stores the cumulative data over a period of time and produces an information display for adjusting the web feed process.

Regarding claims 25-26, Ratzel does not directly disclose monitoring/storing information of the cumulative process of producing more than one product, however McLean monitors an entire process and collects data over an extended period of producing more than one product; see figures 8E-8G.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to include a data processing system with a visual display as taught by McLean in the invention of Ratzel in order to assist in monitoring the process of operation.

(11) Response to Argument

Response to Arguments

Appellant's arguments filed 9/29/03 and 2/4/04 have been fully considered but they are not persuasive. Appellant points out the language written by the examiner in paragraph 5 of the Non-Final Rejection (paper no. 12) "Regarding claims 25-26, Ratzel does not directly disclose monitoring/storing information of the cumulative process of producing more than one product." (emphasis added). The examiner was addressing the limitation of *monitoring the cumulative length* of cushioning products produced

during the period of time [during which a plurality of three-dimensional cushioning products are made] (claims 25-26, line 2); see also claim 22, lines 2-3. The monitoring step of Ratzel comprises a process controller, which sends and receives signals to the monitoring assembly (length measuring device 12; figure 1) located near the gear assembly 54 (monitors angular motion of the gear assembly). "The length measuring device is positioned to monitor the angular movement of the rotating conversion assembly and thus the length of the cushioning products." (column 4, lines 34-36). Thus signals are generated and stored and stored information corresponding with a cumulative length is retrieved by the processor to activate the cutting mechanism. When the angular movement (revolutions) coincides with the length of the pad to be made the gear assembly 54 including drive gear 60 are stopped temporarily while the cutter 56 is activated. Thus the monitoring step as taught by Ratzel is considered over a period of time in which a plurality of cushioning products are made, however may not be construed to monitor the cumulative length of the products produced by the apparatus over the period of time because of the intermittent activation of the gearing.

The appellant argues that "at least the acts of storing and retrieving as recited in claim 20" should distinguish over Ratzel, however Ratzel describes an example of monitoring the length, storing and retrieving information concerning cumulative length of pads; see column 6, line 52 - column 7, line 2. Ratzel produces a three-foot pad, a one foot pad, and a six inch pad. Information regarding the total or cumulative length of the pads are stored and retrieved during the operation of the machine.

Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the system of Ratzel would not be able to make determinations for a packing job or a worker's shift over the course of a week) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding arguments concerning McLean, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, computer control of automated equipment is generally available to one of ordinary skill in the art as is the use of a visual display monitor. Furthermore, the teachings of McLean are not to be adapted to produce cushioning products but only to be adopted in the invention to Ratzel.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

ch
February 6, 2004

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